

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND COMPOUNDING) MDL NO. 13-02419-RWZ
PHARMACY CASES LITIGATION)
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BEFORE: THE HONORABLE RYA W. ZOBEL

**STATUS CONFERENCE
AND
MOTION HEARING**

John Joseph Moakley United States Courthouse
Courtroom No. 12
One Courthouse Way
Boston, MA 02210

September 10, 2015
2:00 p.m.

Catherine A. Handel, RPR-CM, CRR
Official Court Reporter
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Boston, MA 02210
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(Appearances continued on the next page.)

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P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Rya W. Zobel, United States District Court Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, One Courthouse Way, Boston, Massachusetts, on September 10, 2015.)

COURTROOM DEPUTY CLERK URSO: This is In Re: New England Compounding. It's 13-md-2419.

THE COURT: Good afternoon.

MS. JOHNSON: Good afternoon, your Honor.

THE COURT: Maybe we can just skip counsel identifying themselves. I do not profess to know all counsel or their names. However, we'll proceed as best we can in accordance with the agenda that counsel have prepared, but let me just organize myself here.

(Pause.)

THE COURT: All right. Ms. Johnson.

MS. JOHNSON: Good afternoon, your Honor.

There is one item that we have asked the Court for oral argument on today that relates to the orders to show cause relating to New Hampshire jurisdiction. If the Court is ready to proceed with argument on that, Mr. Lee will address that.

THE COURT: Well, it seems to me that there are now also motions to dismiss by the defendants pending in some --

1 at least some of those cases, and maybe what we should do is
2 to hear the two together, to hear the response to the order to
3 show cause and the motion to dismiss. If the case is, in
4 fact, subject to dismissal, then I probably don't need to
5 consider the jurisdictional argument that the order raised.

6 MR LEE: Your Honor, Andrew Lee on behalf of the
7 plaintiff Jojayra Garcia and Cheryl Ann McCarthy.

8 We are not prepared to address the motion to dismiss
9 and the --

10 THE COURT: I understand that. What I would suggest
11 is that we hear the two together at the October meeting.

12 MR LEE: Yes, your Honor. We have no problem with
13 that.

14 There's only one issue I wanted to bring up with the
15 Court, if I may.

16 We have attempted to get the summons so that we can
17 effectuate service upon the defendants. We called the Court
18 on multiple cases and, unfortunately, they have informed us
19 that we will not receive a summons until the jurisdictional
20 issue is resolved.

21 THE COURT: Well, I think it is appropriate to -- for
22 you to have the summons and to serve them. So, I will tell
23 the Clerk to do that.

24 MR LEE: Thank you, your Honor.

25 THE COURT: So, that's one.

1 I have a question. The motion to dismiss suggests
2 that the New Hampshire cases were filed in state court
3 originally; is that correct?

4 MR LEE: Not our cases. There were several other New
5 Hampshire cases that I'm aware of that were filed in state
6 court. However, they are not our clients.

7 THE COURT: But are they involved in this proceeding
8 yet in any way?

9 MR LEE: Not that I'm aware of.

10 THE COURT: So, nobody has tried to bring them here?

11 MR LEE: I believe they actually did remove them from
12 state court to this Court.

13 THE COURT: Does anybody know their whereabouts?

14 MR. McGRATH: Yes. If I may, your Honor.

15 THE COURT: You're on the telephone?

16 MR. McGRATH: Yes, ma'am.

17 THE COURT: Okay. And your name, please?

18 MR. McGRATH: Thank you. Attorney Peter McGrath from
19 New Hampshire.

20 And on several of our cases they were originally
21 filed, as the Court has noted, in state court and then moved
22 to federal court.

23 THE COURT: Is there a plan to bring them here, to
24 try to --

25 MR. McGRATH: Yes.

1 THE COURT: -- what the Garcia plaintiffs have done?

2 MR. McGRATH: Yes, ma'am.

3 THE COURT: So, are you planning -- have you filed
4 any motions -- well, any responses to the Court's order or are
5 there motions to dismiss pending in the cases that you're
6 involved in?

7 MR. McGRATH: Yes, on both, we have filed and there
8 are motions and some objections, and my understanding is we're
9 going to hear those in October.

10 THE COURT: But the cases are not yet here or are
11 they?

12 MS. JOHNSON: I believe that they are all here, your
13 Honor.

14 THE COURT: So, all of the cases that started in New
15 Hampshire are now here in one way or another?

16 MS. JOHNSON: At least some of Mr. McGrath's cases
17 are in the MDL. The others may still be on their way. I'm
18 not sure, but we can provide the Court with an update, and we
19 understand that we'll address all of those issues at the next
20 status conference.

21 MR. McGRATH: Yes, we agree. This is Attorney
22 McGrath. Thank you.

23 THE COURT: So, I think what we will do is to hear
24 all the cases that are here on both the defendants' motions to
25 dismiss and on -- with respect to the response to the Court's

1 order pertaining to jurisdiction at the next meeting in
2 October.

3 MR. McGRATH: Yes, ma'am. Thank you.

4 THE COURT: And we'll decide by the end of the day
5 today whether we'll do it before the regular agenda or after.
6 I think it makes more sense after, really, which is what I
7 think we'll do today as well as with respect to anything that
8 we have to hear.

9 So, those motions are now addressed. The summonses
10 will be issued, and we will hear the entire works in October.
11 That takes us to Part B.

12 MS. JOHNSON: Thank you, your Honor.

13 In terms of the status of the bankruptcy, the agenda
14 simply reflects that this Court has entered an order that
15 partially withdrew the reference. I don't think there's any
16 further bankruptcy report at this stage.

17 THE COURT: Okay.

18 MS. JOHNSON: In terms of the insurance declaratory
19 judgment actions, Ms. Martin will be addressing the status of
20 the Lloyd's and the Ironshore, Ameridose actions.

21 MS. MARTIN: Good afternoon, your Honor.

22 Just a quick update. The Lloyd's action, the parties
23 reached a settlement and the payment is en route, and Judge
24 Saylor issued an order that the case be dismissed in 30 days
25 unless another party reports that it should not be.

1 Ironshore has not reached a settlement and,
2 therefore, the stay has been lifted, and Judge Saylor has set
3 a hearing date for that status conference on that case on
4 Monday, September 28th, and he wants the party to have a game
5 plan.

6 THE COURT: Thank you.

7 MS. JOHNSON: And Mr. Gastel will now address the
8 status of the Tennessee Specialty Surgery dec action.

9 MR. GASTEL: Good afternoon, your Honor. Ben Gastel.

10 If you recall the last status conference, I alerted
11 you to an issue that had arisen related to what the plaintiffs
12 believe was sort of an attempt to do an end-run around your
13 motion to dismiss order related to whether or not Tennessee
14 clinics could be held responsible for conduct under the
15 Tennessee Products Liability Act.

16 We did end up filing our motion to stay that case
17 giving them sort of overlaps with the issues that your Honor
18 addressed in that order that was issued last year.

19 That briefing is almost complete. We probably will
20 file a reply in support of our motion, but the State Farm
21 Insurance Company did file an opposition to the motion.
22 Specialty Surgery, whose counsel is in the room, did file a
23 response, although they did not oppose the motion. I believe
24 that they took no position on it.

25 I took the liberty today to file within the docket of

1 this Court, and it's Docket No. 2239, the briefing related to
2 the motion to stay. I think your Honor might find some of the
3 positions that State Farm has taken in its opposition
4 interesting.

5 Most notably, I believe that they basically conceded
6 the point that they are challenging the ability of the
7 plaintiffs here to assert those claims, and I quote in the
8 notice their conclusion in their response to the motion to
9 stay, and we just wanted to alert the Court to the fact that
10 that's now being litigated in Tennessee, and we hope to put a
11 stay to that, but the Judge will rule in good time on the
12 motion.

13 THE COURT: So, nothing is before me with respect to
14 that, right?

15 MR. GASTEL: We haven't filed a formal motion yet,
16 your Honor. We hope that the Judge in Tennessee will see and
17 agree with us that the action should be stayed, and we'll
18 await his ruling on those motions.

19 THE COURT: Okay. Good.

20 MS. JOHNSON: That brings us to Item No. 4, the
21 status of discovery.

22 The Plaintiffs' Steering Committee has filed an
23 unopposed motion for entry of a qualified protective order
24 that permits the Tennessee Department of Health to produce its
25 list of patient names. That is being done in conjunction with

1 the specific narrow purpose of the settlement. There was no
2 opposition to that order. I do have a copy of that order, if
3 I may.

4 THE COURT: I have it here. However, I have one
5 request. On Page 2 -- are you talking about the settlement --
6 dismissing claims of settling defendants or another, the next
7 one, the unopposed motion for qualified protective order?

8 MR. GASTEL: I believe, your Honor, that we're still
9 on 4(a), the PSC's unopposed motion for qualified protective
10 order.

11 THE COURT: Okay. That's the one I'm talking about.
12 Where is it?

13 There is a reference in one of these motions -- I
14 have the wrong set here -- to an order to the Tennessee health
15 authorities ordering them to turn over documents, I believe.

16 MR. GASTEL: Yes.

17 THE COURT: And I'm not sure I like that language
18 because the Tennessee health authorities are not before me. I
19 don't think I have any power to order them, and I would like
20 you to substitute for "ordering" them "request."

21 MR. GASTEL: Your Honor, I will make that change.

22 I will represent to the Court that I have worked with
23 the Tennessee Department of Health on this and they do not
24 oppose the production of those documents, but, nonetheless, I
25 will make the change.

1 THE COURT: I think it's the protocol.

2 MR. GASTEL: I certainly understand the Court's
3 position. We'll clean up the language and get an order to you
4 today.

5 THE COURT: I wish I could find it. Oh, here it is,
6 yes. And it is on Page 2, and it is not "ordered." It says,
7 "The Tennessee Department of Health shall," do something,
8 Paragraph No. 2.

9 MR. GASTEL: Sure.

10 THE COURT: And I would suggest that it might say,
11 "is requested to."

12 MR. GASTEL: We'll make that change and issue a new
13 order today, your Honor.

14 THE COURT: Thank you.

15 MS. JOHNSON: That brings us to 4(b), which is just a
16 recognition that many significant orders have entered since
17 the last status conference, and I will just quickly identify
18 those, particularly for counsel on the phone.

19 There was an order addressing the Inspira's motion
20 for a protective order. There has been an order on -- denying
21 the motion to quash St. Thomas' subpoenas to Dr. Austin, and
22 the deposition of Dr. Austin will be going forward in short
23 order. Tomorrow, actually. Thank you, Mr. Gastel.

24 There have also been two orders that are not
25 referenced here because they were entered after the agenda was

1 filed: One was Judge Boal's order addressing the motion to
2 compel PSC responses to discovery and the PSC has received
3 that order and will provide the additional responses Judge
4 Boal requested -- Judge Boal ordered within the next two
5 weeks; and the final order would be this Court's order
6 addressing the Box Hill motion to dismiss.

7 THE COURT: Okay.

8 MS. JOHNSON: That brings us to No. 5, the status of
9 the litigation track. Again, there has been an order entered
10 by this Court to dismiss with prejudice all claims against the
11 settling defendants.

12 THE COURT: The question about that is what else
13 needs to be done to close those cases now? Anything?

14 MS. JOHNSON: Technically, no, your Honor. Meaning,
15 that this Court has now dismissed all of those causes of
16 action.

17 In terms of cleaning up dockets, for example, we had
18 discussed with the Court earlier perhaps filing in the MDL
19 docket -- I'm sorry -- filing in individual dockets a notice
20 of dismissal and linking that to the document -- the order
21 that's entered in the MDL docket.

22 It's unclear to the PSC that that's necessary, but
23 from the Court's perspective or defendant's perspective, to
24 the extent people would like the individual dockets to be
25 cleaner, we certainly could do that.

1 THE COURT: Well, normally we can't close a case
2 without a judgment and -- or a dismissal or some kind of an
3 order, and I think we need something to -- just to be able to
4 close out those cases. Because, otherwise, they keep hanging
5 around. The MDL may disappear, but the individual cases are
6 still pending. So, whatever mechanism you can determine will
7 close them, we will cheerfully accept and close them.

8 MS. JOHNSON: Your Honor, I suggest that the PSC
9 consider the best way to administratively accomplish that and
10 we will speak with the Clerk to do that.

11 THE COURT: Good.

12 MS. JOHNSON: And we'll suggest something to you at
13 the next status conference.

14 THE COURT: Okay. And I think, then, the next
15 several items all have to do with Judge Boal, down to the
16 schedule for further conferences.

17 MS. JOHNSON: I think that's correct, your Honor.

18 I would recognize Item 5(b), which is the United
19 States' motion to intervene and seeking a stay. There may be
20 some desire by -- for either the government or the Tennessee
21 defendants to address that insofar as it may have an impact on
22 some of the recently-scheduled depositions and, therefore, may
23 conceivably have an impact on some of the discovery deadlines.

24 THE COURT: I think it would be helpful if the
25 parties in this case could, if the government seeks such a

1 stay, try to negotiate with the government to keep these cases
2 going as much as possible. I mean, if there were to be a stay
3 that would impact the progress of this case, the progress of
4 this case will be impaired for probably three to four years,
5 if not longer. I mean, this is a huge criminal case and it's
6 not going to go to trial in the next week.

7 MS. JOHNSON: Well, the PSC is certainly willing to
8 do that, your Honor. I expect that the other parties are as
9 well, but, of course, Mr. Tardio can speak for himself.

10 I will say that the PSC recognizes that the
11 government did not seek to stay these actions in their
12 entirety and we are, frankly, appreciative of that because we
13 think there is much that can be done to continue moving these
14 civil cases forward.

15 THE COURT: Okay.

16 MR. TARDIO: Your Honor --

17 THE COURT: I'll back you up on it.

18 MR. TARDIO: -- Chris Tardio for the Tennessee clinic
19 defendants.

20 One short-term issue we have is that the government
21 has asked to stay depositions of NECC former employees of the
22 Massachusetts Board of Pharmacy.

23 Practically speaking, we have NECC former employees
24 set to be deposed in the next few weeks. So, I need some
25 guidance from the Court on what to do with those depositions,

1 because the government's motion to stay is not going to be
2 disposed of by the time these depositions are set to happen,
3 and what I don't want to do is indefinitely postpone these
4 depositions in recognition of the motion to stay and then have
5 the deadlines run, which they will, and be -- when I seek --
6 later if the motion to stay is denied or if these depositions
7 happen at sometime down the road, I don't want to be held to a
8 deadline that has hence passed.

9 THE COURT: When was the motion to stay filed?

10 MR. TARDIO: The Friday before Labor Day.

11 THE COURT: In this case?

12 MR. TARDIO: Yes, in the entire MDL.

13 THE COURT: So, when is your -- when are you going to
14 file your opposition or limited opposition?

15 MR. TARDIO: It will not be due for eight or ten days
16 from now, seven to ten days.

17 THE COURT: You could file earlier.

18 MR. TARDIO: Well, we could, but I don't think that
19 the Court -- unless the Court gives us a ruling -- the first
20 deposition, I think, is set on September 22nd.

21 THE COURT: File it earlier and say it's an emergency
22 issue. I mean, people file all kinds of emergency motions
23 when there's no emergency.

24 (Laughter).

25 THE COURT: Request an early disposition. I'll do it.

1 MS. JOHNSON: To share with the Court a piece of
2 information, Judge Boal has set that argument for hearing in
3 October.

4 THE COURT: So, I will talk to Judge Boal and we'll
5 try to expedite it.

6 MS. JOHNSON: I'm sure all the parties appreciate
7 that, your Honor. Thank you. I believe that --

8 THE COURT: Wait one second. I need to make a note
9 to myself.

10 (Pause.)

11 THE COURT: And I think it would be helpful if you
12 were to file whatever opposition you're going to file,
13 whatever limited opposition and suggestions as to how those
14 might be handled. So, when you file it, Judge Boal can take
15 care of it. I'll talk to her about moving the schedule up.

16 MR. TARDIO: We will do so and we will note in the
17 motion --

18 THE COURT: That may not take care of the entirety of
19 the government's motion, but to the extent that you're talking
20 about a particular group of employees whose depositions have
21 been scheduled, then let us just address them at the moment.

22 MR. TARDIO: Thank you, your Honor.

23 THE COURT: Okay. Thank you.

24 MS. JOHNSON: So, turning to agenda Item 5(c), your
25 Honor. There was a request that the PSC add to the proposed

1 agenda a reference to an ex parte motion that may have been
2 filed by Lisa Cadden's attorney.

3 THE COURT: I think that's for Judge Boal initially.
4 Motions for reconsideration are normally addressed by the
5 Judge who made the original order. So, it's for her.

6 MS. JOHNSON: And I'm in a bit of an awkward
7 position, your Honor, because I don't have firsthand knowledge
8 of what that motion is or how we know that it exists, but I
9 suppose I'll say that it's a little unclear to the PSC why
10 that motion for reconsideration would be done on an ex parte
11 basis, and I'll leave it at that for the time being.

12 THE COURT: Okay. I mean, I assume that you will
13 have notice when Judge Boal hears this and you can ask to
14 participate.

15 MS. JOHNSON: Thank you, your Honor.

16 MS. PEIRCE: Your Honor, can I clarify that? I
17 represent Lisa Cadden. Just to shed light, the motion --

18 COURT REPORTER: Can you tell me your name, please?

19 MS. PEIRCE: Michelle Peirce for Mrs. Cadden.

20 THE COURT: How do you spell your last name?

21 MS. PEIRCE: P-e-i-r-c-e.

22 It actually was correctly or incorrectly directed to
23 you, your Honor. What's pending and what was ex parte is
24 simply a motion to impound, and then the intent was to file a
25 motion to reconsider once the motion to impound was granted.

1 So, that's why there is some secrecy involved or apparent
2 secrecy, but that's the issue.

3 THE COURT: What is being impounded, the motion
4 itself?

5 MS. PEIRCE: Both, correct. So, the motion to --

6 THE COURT: What do you mean, "both"? The motion to
7 impound is impounded and the motion that seeks to impound is
8 impounded?

9 MS. PEIRCE: That was the request. I realize it gets
10 a little metaphysical, your Honor, and I may be impounded as
11 well. So, the hope --

12 THE COURT: That would certainly solve the problem,
13 wouldn't it?

14 (Laughter.)

15 MS. PEIRCE: And it would solve many problems, your
16 Honor, for many people. So, I'll take that into
17 consideration.

18 So, the hope is that the motion to impound the motion
19 to reconsider could be granted so that the appropriate parties
20 would have an opportunity to respond to the motion to
21 reconsider.

22 And, again, to clarify, it is asking you to
23 reconsider for, respectfully, an incorrect standard of law
24 that was applied to the issue.

25 THE COURT: I think I will adhere to my earlier

1 ruling. It is appropriate for Judge Boal to deal with it
2 based on whatever she may not have known before you filed your
3 motion. And so, I will leave it to her, both to decide the
4 motion on reconsideration in the first instance. I suppose
5 you could ask for an appeal. Under the statute, you have a
6 right to come to the District Judge who referred the case to a
7 Magistrate Judge if you don't like the ruling, but I think
8 reconsideration is really first for her, especially if you
9 want to point out to her some law that she may not have known
10 about, and I think you need to work out with her the issue of
11 sealing, which is, I think, what you're really talking about,
12 in such a way that any party who has an interest in it may be
13 able to respond.

14 MS. PEIRCE: Thank you, your Honor.

15 THE COURT: Okay. So, I'll talk with her about that.
16 Okay.

17 MS. JOHNSON: So, turning to Item 5(d), Mr. Chalos
18 wanted to address the status of the Tennessee Bellwether
19 process.

20 THE COURT: Okay.

21 MR. CHALOS: Thank you, your Honor. It's Mark Chalos
22 on behalf of the plaintiffs.

23 The parties, pursuant to your Honor's July 9th, 2015
24 order in the Tennessee cases, have exchanged their Bellwether
25 picks, eight for each side. There's one case in common,

1 although there's some disagreement about the category that
2 that case should fit in.

3 We attempted as part of that process to come to some
4 agreement as to general parameters of which cases we would
5 propose for Bellwethers, somewhat mirroring the categories in
6 the matrix for the bankruptcy settlement. So, we've got a
7 total of 15 cases that both parties have identified and --

8 THE COURT: And agreed on?

9 MR. CHALOS: Well, I mean, we --

10 THE COURT: Identification means that you both agree
11 as to a particular group?

12 MR. CHALOS: No.

13 THE COURT: Oh.

14 MR. CHALOS: We've proposed our eight. They've
15 proposed their eight. There's one in common. That's as far
16 as we've gotten.

17 Now, a disagreement has arisen in terms of
18 implementing your Honor's July 9th order and, basically, where
19 we are generally in the litigation, the plaintiffs have
20 proposed that we go forward with case-specific discovery in
21 those cases. The defendants have taken the position that
22 until your Honor rules on the issue of whether your Honor has
23 jurisdiction over those cases to try a Bellwether case or a
24 series of Bellwether cases under 28 U.S.C. 157, then your
25 Honor's order does not yet trigger case-specific discovery.

1 THE COURT: You will have a decision within a week.

2 MR. CHALOS: Okay. Well, then that solves that
3 issue. Thank you, your Honor.

4 THE COURT: Okay.

5 Now, schedule for further status conferences. I
6 think we are set for October 14th, at 2:00, and Judge Boal at
7 11:30.

8 MS. JOHNSON: Yes, your Honor.

9 THE COURT: And November 12th, I think, we had also
10 established.

11 MS. JOHNSON: Yes, your Honor.

12 THE COURT: The same drill.

13 MS. JOHNSON: Correct.

14 We would ask, if the Court were inclined, we could
15 set the December status conference, particularly in light of
16 the difficulty with the holiday travel situation. I would
17 suggest as a starting point, Thursday, the 17th.

18 COURTROOM DEPUTY CLERK URSO: That's available. If
19 all counsel are available, that's available for 2 o'clock.

20 THE COURT: Is that agreeable to those counsel who
21 normally appear and, thus, may have travel issues?

22 (No response.)

23 THE COURT: Okay. So, December 17th.

24 COURTROOM DEPUTY CLERK URSO: At 2:00, okay.

25 THE COURT: And Judge Boal, again, at 11:30.

1 MS. JOHNSON: If that works for Judge Boal, your
2 Honor, yes, that would be ideal.

3 COURTROOM DEPUTY CLERK URSO: I'll send a notice to
4 Judge Boal now. So, Judge Boal, at 11:30 would be --

5 MS. JOHNSON: Yes, please.

6 COURTROOM DEPUTY CLERK URSO: Okay. I'm going to
7 send it to Steve right now.

8 MS. JOHNSON: And then two last things, your Honor.
9 Two things: One, we had a request for a report from the
10 federal state liaison about the state law cases, if your Honor
11 would be interested in hearing that. Defense counsel actually
12 asked for that report.

13 THE COURT: Sure.

14 MR. CHALOS: That's me, again, your Honor. Mark
15 Chalos for the plaintiffs. I'll make this brief.

16 There are three main centers of litigation in state
17 courts right now. One is in Michigan, where there are two
18 clinics that have a number of pending cases in state courts.
19 The first is in Northern Michigan against the Neuromuscular
20 Clinic and some related defendants. That case is set for
21 trial to begin October the 28th. I understand that they are
22 in a mediation today. That case involves approximately 120
23 plaintiffs, some of whom have consortium claims, some of whom
24 are the patients who actually received the tainted medication.
25 Fact discovery is concluded, from what I understand, and

1 expert discovery is ongoing in preparation for that October
2 28th trial. There is a second --

3 THE COURT: One case is going to trial?

4 MR. CHALOS: I'm sorry?

5 THE COURT: They're having one trial, one case?

6 MR. CHALOS: Actually, that is a certified class.
7 So, that is going to trial as a class.

8 THE COURT: Presumably, on -- the class on what
9 issues?

10 MR. CHALOS: As I understand it, they have bifurcated
11 the issues and the initial trial will be on just issues of
12 duty and breach of the duty under state law. I don't know
13 what their process is getting from that judgment to, you know,
14 some kind of final resolution, but that is going forward as a
15 class for all 120 individuals.

16 The second group of cases in Michigan involves the
17 Michigan Pain Center and that is under -- right now those
18 cases are approximately 311 claims, 37 of which are loss of
19 consortium claims, the spouse of an injured person. They have
20 a status conference set for October the 9th, and they are
21 engaged presently in active settlement negotiations, and I
22 think there is some reasonable expectation that case will
23 settle.

24 THE COURT: I'm sorry. How many were there, 100,
25 what?

1 MR. CHALOS: 311 claims.

2 THE COURT: And who is the defendant on the first
3 group, the 120 cases?

4 MR. CHALOS: It's the Neuromuscular Clinic and some
5 related entities.

6 THE COURT: Okay.

7 MR. CHALOS: And that's in Northern Michigan. And
8 then the second group is Michigan Pain...

9 (Discussion off the record.)

10 MR. CHALOS: Michigan Pain Specialists. I'm sorry.
11 MPS, Michigan Pain Specialists. That's the second group in
12 Michigan.

13 There is also a batch of cases in Indiana,
14 approximately 120 cases that are filed in the various state
15 courts there, primarily centered in Elkhart and St. Joseph
16 counties. They are presently addressing a threshold legal
17 issue as to whether those cases would be governed by the
18 Indiana state medical negligence statute or whether it's a
19 general negligence standard, and that's, evidently, an
20 important issue for those cases. They've argued -- they've
21 briefed and argued that issue and they're awaiting a ruling on
22 that.

23 THE COURT: These are, essentially, motions to
24 dismiss that are pending?

25 MR. CHALOS: I think so. I don't know exactly what

1 the procedural posture is, but they're awaiting a decision.
2 That's, apparently, either determinative or otherwise shaping
3 for that litigation, and they expect to get a ruling sometime
4 this year on that issue.

5 And then the third batch of cases, significant batch
6 of cases, is in Maryland state courts, and right now there are
7 24 cases that are pending in the Maryland Healthcare
8 Alternative Dispute Resolution Office, which is under
9 Maryland's law a necessary stop in the process of filing a
10 medical malpractice case and that's, essentially, an
11 arbitration body, although the expectation is that those cases
12 will not resolve at that stop and will instead be ultimately
13 filed in the state or federal court, and the expectation is
14 ultimately there will be approximately 60 cases, 60 other
15 cases filed in the Maryland courts, and those are the
16 significant --

17 THE COURT: And they will stay there? I mean,
18 there's no possibility that they will come here under any
19 guise?

20 MR. CHALOS: I don't know that that's true. I think
21 some of the cases may be filed in federal court ultimately,
22 although Ms. Dougherty suggests otherwise.

23 MS. DOUGHERTY: Good afternoon, your Honor. Kim
24 Dougherty on behalf of many of the Maryland plaintiffs against
25 three different clinics. Box Hill is one of them, and you

1 have some of those cases pending here in front of you, your
2 Honor.

3 We also have cases that are against Ortho Maryland
4 and Green Spring Surgical Center and the last batch is
5 Hartford Ambulatory.

6 There are some of the Box Hill cases, as I mentioned,
7 here in front of you, your Honor. After your order to show
8 cause decision, we'll anticipate figuring out whether or not
9 you will presume to have jurisdiction over any cases that are
10 filed after the effective date and make a decision at that
11 time.

12 Under the current impression that we've gotten from
13 the Court, we anticipate that those will likely be filed in
14 state court, unless your Honor decides that you continue to
15 have jurisdiction after the effective date.

16 THE COURT: Okay.

17 MR. CHALOS: That's all I have, your Honor.

18 THE COURT: Thank you.

19 MS. MARTIN: Your Honor, for the pro se's, just a
20 really quick update. Since the last status conference, we've
21 had about four or five calls from pro se's, simple questions
22 that were handled pretty quickly. So, that's the entire report.

23 MS. JOHNSON: One final thing, your Honor.

24 The fun thing about being lead counsel is that
25 plaintiff attorneys ask you to say things to judges that they

1 would never stand up and say themselves.

2 We have on our agenda under Item C, fully briefed,
3 Nos. 10 through 12. There are three unopposed motions that
4 the Court has not ruled on for which the time for oppositions
5 has passed. Two of those relate to motions to amend to add
6 particular defendants, one relating to -- one asking to add
7 Premier and some Premier doctors to a New Jersey complaint,
8 and one asking to add an individual doctor, and I've the
9 forgotten which clinic that doctor is associated with. My
10 apologies.

11 I do have copies of orders for all three of those, if
12 I could hand them up, your Honor.

13 THE COURT: I think I have at least Semus. I may
14 have another one. That can be printed easily enough. They're
15 allowed. These unopposed motions are allowed, and I will sign
16 the orders.

17 MS. JOHNSON: Thank you, your Honor.

18 There are a number that we have listed and identified
19 as discovery-related motions. I believe all of those are
20 before Judge Boal. Several of those have been ruled on -- at
21 least a couple of those have been ruled on since the agenda
22 was filed. So, I'm not sure that we need to address those
23 with this Court.

24 THE COURT: I don't think so. I think she's fully in
25 control.

1 MS. JOHNSON: Yes. And then turning to Page 4, we've
2 also listed motions for which oral argument has either already
3 been held or been waived.

4 THE COURT: Well, 157(b)(5) motion -- motions --
5 there are several of them -- are the ones that I said you
6 would have a decision on within a week.

7 MS. JOHNSON: Thank you, your Honor.

8 Which brings us to our final category, which is
9 other, a little bit of a grab bag, one of which is a motion --

10 THE COURT: Wait one second.

11 I think I -- I guess the Box Hill motion --

12 MS. JOHNSON: You just --

13 THE COURT: -- I decided that.

14 MS. DOUGHERTY: You decided --

15 THE COURT: So, the Box Hill motions are done, No. 20
16 on Page 4.

17 MS. JOHNSON: Yes.

18 THE COURT: The Ohio medical defendants' motion to
19 dismiss has no opposition. Does that mean that it is allowed
20 -- to be allowed without opposition?

21 MS. JOHNSON: No, your Honor, it doesn't. And,
22 actually, I think that's my motion. So, I need to get on
23 that. I'm not sure that that is -- I'm not sure that the time
24 has elapsed to respond to that. So --

25 THE COURT: The motion was filed on July 24th. Do

1 you want time to file an opposition?

2 MS. JOHNSON: Yes, please, your Honor.

3 THE COURT: When?

4 MS. JOHNSON: Next week.

5 MR. WEIGAND: Your Honor, Tory Weigand. I represent
6 the Ohio defendants who filed that motion.

7 COURT REPORTER: Could you tell me your name, please?

8 MR. WEIGAND: You gave an extension --

9 THE COURT: Hold it one second.

10 Could you give your name to the reporter, please, and
11 me, for that matter.

12 MR. WEIGAND: Sure. Tory Weigand for the Ohio clinic
13 defendants.

14 THE COURT: How do you spell your last name?

15 MR. WEIGAND: W-e-i-g-a-n-d.

16 THE COURT: Okay.

17 MR. WEIGAND: Just for clarification, I had
18 discussions with, I believe, the PSC and we agreed to
19 September 11th.

20 THE COURT: For them to file an opposition?

21 MR. WEIGAND: Correct.

22 MS. JOHNSON: That would be better, your Honor.

23 THE COURT: And you don't want time to reply, right?

24 MR. WEIGAND: May not, your Honor. May not.

25 THE COURT: Good. Okay.

1 MS. JOHNSON: That brings us, then, to other motions.
2 There is a pending to motion withdraw --

3 THE COURT: Let me ask you one other question.

4 Going back to No. 20, the Box Hill. To what extent
5 does the decision on Chowdhury, or whatever his name was,
6 govern the other Box Hill defendants, the other pieces of it?

7 MR. KIRBY: Your Honor, Greg Kirby on behalf of Box
8 Hill defendants.

9 You said "Chowdhury." That's not my client. I think
10 that's somewhere else. I don't know --

11 THE COURT: That's not -- it's not Maryland?

12 MR. KIRBY: No. My client is with Box Hill. Box
13 Hill Surgery Center, Ritu Bhambhani and her LLC -- FDLC.

14 THE COURT: Okay.

15 MS. JOHNSON: I apologize, your Honor. That's an
16 individual doctor associated with a different clinic, but I'm
17 having trouble remembering which clinic, but we hear the
18 Court's question and we will provide an answer at the next
19 status or before, if appropriate.

20 THE COURT: Okay. Now, No. 22. Any reason not to
21 allow that?

22 MS. JOHNSON: No, your Honor. That's an issue that
23 was argued at the -- at the previous status conference.

24 THE COURT: The motion to withdraw?

25 MS. JOHNSON: Yes.

1 THE COURT: What was the issue?

2 MS. JOHNSON: The issue was the individuals whose
3 insurance coverage -- some of the defendants, both individuals
4 and affiliated, insurance coverage lapsed and the attorneys
5 were seeking to withdraw and you heard argument from some of
6 them, including, I remember, counsel for GDC on that motion.

7 THE COURT: Okay.

8 MS. JOHNSON: No. 23 your Honor has asked be heard
9 next time as --

10 THE COURT: Yes. Well, that's part of what we
11 discussed at the beginning.

12 MS. JOHNSON: Yes. As is No. 24.

13 And then, finally, No. 25 simply identifies all of
14 the briefing before this Court relating to the choice of law
15 issue.

16 THE COURT: Yes. And we'll work on that one, too. I
17 think that that's entirely in our court now.

18 MS. JOHNSON: And that brings us to briefing in
19 progress, your Honor. I will just note there is still one
20 petition to approve the wrongful death claim of one
21 individual, Virginia plaintiff, which is Corker. They have
22 asked for oral argument, but I believe at the next status
23 conference. I don't believe counsel for plaintiff Corker is
24 present, and then --

25 THE COURT: Is someone here for the Virginia case

1 that needs approval?

2 (No response.)

3 THE COURT: Okay. So, we'll --

4 MR. FENNEL: Your Honor, this is Patrick Fennell by
5 telephone on the Plaintiffs' Steering Committee and a Virginia
6 attorney.

7 That is correct, wrongful death cases require court
8 approval of the settlements. Your Honor may recall that you
9 approved several of those a few weeks ago last -- I think
10 July, actually.

11 THE COURT: So, we will do this one after the meeting
12 in October.

13 MS. JOHNSON: Thank you, your Honor.

14 THE COURT: And 27, 28, and 29 all go to Judge Boal.

15 MS. JOHNSON: And they have all been set for argument
16 next month already.

17 THE COURT: Does anyone have any other business that
18 we need to take care of today? Anybody on the phone?

19 (No response.)

20 THE COURT: Well, as always, thank you.

21 MS. JOHNSON: Thank you, your Honor.

22 MR. GASTEL: Thank you, your Honor.

23 THE COURT: Court is in recess.

24 (Adjourned, 2:46 p.m.)
25

C E R T I F I C A T E

I, Catherine A. Handel, Official Court Reporter of the United States District Court, do hereby certify that the foregoing transcript, from Page 1 to Page 33, constitutes to the best of my skill and ability a true and accurate transcription of my stenotype notes taken in the matter of Multidistrict Litigation No. 13-02419-RWZ, In Re: New England Compounding Pharmacy Cases Litigation.

September 30, 2015
Date

/s/Catherine A. Handel
Catherine A. Handel, RPR-CM, CRR